

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

TIMOTHY RAY SADLER,

Petitioner,

vs.

SECRETARY, DEPARTMENT OF
CORRECTIONS, et. al.,

Respondents.

CV 21-09-H-BMM-KLD

ORDER

United States Magistrate Judge Kathleen L. DeSoto entered her Findings and Recommendations in this case on March 25, 2021 (Doc. 43). Judge DeSoto recommended that Defendants' complaint (Doc. 1) should be DISMISSED for without prejudice as unexhausted, that the Clerk of Court should be directed to enter judgment of dismissal, and a certificate of appealability should be DENIED. Defendant filed objections on April 8, 2021. (Doc. 44).

The Court reviews de novo those Findings and Recommendations to which a party timely objected. 28 U.S.C. § 636(b)(1). The Court reviews for clear error the portions of the Findings and Recommendations to which the party did not specifically object. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Where a party's objections constitute

perfunctory responses argued in an attempt to engage the district court in a reargument of the same arguments set forth in the original response, however, the Court will review the applicable portions of the findings and recommendations for clear error. *Rosling v. Kirkegard*, 2014 WL 693315 *3 (D. Mont. Feb. 21, 2014) (internal citations omitted).

Defendant's objections advance the same arguments that he raised before. The Court will not engage in Defendant's attempt to reargue the same issues. The Court reviewed Judge DeSoto's Findings and Recommendations for clear error. The Court finds no error. Before Sadler can proceed with a federal habeas petition, he must give the state courts one full opportunity to review his constitutional claims.

IT IS ORDERED that Judge DeSoto's Findings and Recommendations (Doc. 3) are **ADOPTED IN FULL**.

1. Defendant Sadler's Petition (Doc. 1) is **DISMISSED** without prejudice as unexhausted;
2. The Clerk of Court is directed to enter judgment of dismissal; and
3. The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate

Procedure that any appeal of this decision would not be taken in good faith.

DATED this 14th day of April, 2021.

A handwritten signature in blue ink, reading "Brian Morris". The signature is written in a cursive, flowing style.

Brian Morris, Chief District Judge
United States District Court